U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2004

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition, and her reasons therefore. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation that claims to be a subsidiary of Green Hut Foods, Inc., located in the Philippines. The petitioner claims to be engaged in international trade and the tour agency business. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director approved the immigrant petition on June 24, 1998.

Based on further review of the record, the director issued a notice of intent to revoke the approval on May 10, 2002. The director determined that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity, that the petitioner has a qualifying relationship with a foreign entity, or that the petitioner has the ability to pay the beneficiary's proffered wage. After the petitioner failed to respond to the notice of intent to revoke, the director revoked the approval of the petition on August 16, 2002.

On appeal, counsel submits additional evidence addressing the issues discussed by the director in the notice of intent to revoke the petition. Counsel also acknowledges his receipt of the notice of intent to revoke, dated May 10, 2002, but asserts that on June 4, 2002 he submitted a written request for an extension of time in which to submit a response to the director's notice. Counsel further states that because he did not receive a response from the director regarding his request for an extension of time, he assumed that the request was granted, thereby allowing him until September 6, 2002 to submit a response. Contrary to counsel's supposition, there is no law or regulation that mandates an automatic extension of time to respond to a notice of request, especially where no reasonable explanation for the request is provided. Counsel's assumption, therefore, was not based on any legal ground.

The evidence of record clearly shows that both the notice of intent to revoke and the final notice of revocation were properly sent to the petitioner's address of record and further indicates that the notice was also forwarded to the petitioner's counsel of record. *See* 8 C.F.R. § 103.5a. Therefore, the AAO concludes that the notice of intent to revoke the petition was properly issued and delivered to the appropriate parties.

Generally, the decision to revoke approval of an immigrant petition will be sustained, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

A notice of intent to revoke approval of a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. *Matter of Li*, 20 I&N Dec. 700, 701 (BIA 1993); *Matter of Arias, supra* at 569-70; *Matter of Ho*, *supra* at 590; *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial. *Matter of Ho*, supra at 590.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. Id.

Notwithstanding the Service's burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner still bears the burden of proof to establish eligibility for the benefit sought. *Id.* at 589; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *see also Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In the present case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was in the record at the time the notice was issued. The petitioner did not offer a timely explanation or rebuttal to the notice of intention to revoke and has not overcome the factual inconsistencies contained in the record.

Notwithstanding the petitioner's submission of evidence on appeal, the petitioner failed to offer any explanation or rebuttal to the director's properly issued notice of intention to revoke. Accordingly, pursuant to Matter of Arias, supra, the director's decision to revoke the petition's approval will not be disturbed.

The petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.